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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **INCOME TAX APPEAL No. 422/2018**

Date of decision: 27th August, 2018

PR. COMMISSIONER OF INCOME TAX ..... Appellant
Through Mr. Raghvendra Singh, Jr. Standing Counsel
versus

AMERICAN EXPRESS INDIA PVT. LTD. ..... Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Impugned order dated 6th October, 2017 passed by the Income Tax Appellate Tribunal (Tribunal, for short) dismisses the appeal preferred by the Revenue against the order passed by the Commissioner of Income Tax (Appeals) deleting penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (Act, for short).

2. Penalty under Section 271(1)(c) of the Act was imposed by the Assessing Officer in relation to return of income filed by the assessee-American Express India Private Limited (respondent-assessee, for short) in respect of Assessment Year 2002-03 on the ground that while computing deduction under Section 10B of the Act they had wrongly netted the interest

earned on the income tax refund of Rs.1,52,29,404/- against the interest paid. The interest paid on the income tax refund should have been treated as income from other sources and could not have been netted or set off from the interest paid to compute the deduction under Section 10B of the Act.

3. In the present appeal, we are not concerned with computation of quantum of deduction under Section 10B of the Act. The question relates to discharge or satisfaction of onus under Explanation 1 to Section 271 (1)(c) of the Act.

4. It is an accepted and admitted position that the respondent-assessee, a 100% export oriented unit, was engaged in business of accounting data processing for its various customers, including American Express World Wide. The respondent-assessee did not have any other business income and was claiming deduction under Section 10B from Assessment Years 1996-97 to 2005-06.

5. On the question of netting of interest earned on the income tax refund against interest paid, the stand of the respondent-assessee was that deduction under Section 10B was to be computed in terms of formula prescribed in the Section. Reliance was placed on decisions under Section 80HHC of the Act to draw distinction between Section 10B and Section 80I/80HH of the Act. Netting of interest taxable under the head "income from business" was permissible and allowed for computation of deduction under Section 80HHC of the Act. Some decisions of the Tribunal were relied upon. It was stated that the respondent-assessee had to pay interest on account of overdraft facility, which they had to avail only to pay the income tax demand. Ergo, in absence of any income other than exempt income under Section 10B of

the Act, interest earned on the income tax refund was directly linked and connected with the business income of the respondent-assessee.

6. The respondent-assessee in the quantum/assessment proceedings had succeeded before the Commissioner of Income Tax (Appeals), which decision was reversed by the Tribunal holding that the interest earned on the income tax refund was to be taxed under the head "income from other sources" and was not eligible for deduction under Section 10B of the Act.

7. There is no dispute or debate that the respondent-assessee had specifically declared and stated in the income tax return that they had netted the interest received on the income tax refund from the interest paid for the purpose of computing deduction under Section 10B of the Act. Material facts were clearly disclosed, and not concealed and withheld.

8. The Tribunal has referred to the decision of the Supreme Court in ***MAK Data Private Limited versus CIT,*** (2013) 359 ITR 593 (SC) and decision of the Delhi High Court in ***CIT versus Zoom Communication Private Limited***, (2010) 327 ITR 510 (Delhi), to accept that the respondent-assessee had discharged the onus to establish its *bona fide* while making claim for deduction/exemption under Section 10B of the Act by netting of interest received from Income Tax Department, from interest paid to the bank to make payment of tax to the Income Tax Department. Clearly, there was a connect and link between the interest paid to the bank, which was business expenditure, and interest received from the Income Tax Department. Referring to factual matrix, the Tribunal has accepted the reasoning and finding given by the Commissioner of Income Tax (Appeals) that the conduct of the respondent-assessee in netting of income received from

interest paid was *bona fide*. The said finding is a finding of fact and no substantial question of law arises.

9. In view of the aforesaid factual background, we do not think that the order passed by the Tribunal upholding the order of the Commissioner of Income Tax (Appeals) deleting penalty under Section 271(1)(c) requires interference. The appeal has no merit and is dismissed in *limine*, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

AUGUST 27, 2018
b/VKR